

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ANTHONY C. DECKER,)	
)	
Petitioner,)	
)	
vs.)	No. CIV-18-443-C
)	
JEORLD BRAGGS, JR., WARDEN,)	
)	
Respondent.)	

ORDER

On September 11, 2018, the Court denied Petitioner’s 28 U.S.C. § 2254 action. Judgment was entered that date. On October 25, 2018, Petitioner requested the Court enter a Certificate of Appealability (“COA”). That request was denied on October 31, 2018. On November 5, 2018, Petitioner filed a Notice of Appeal. On January 10, 2019, the Tenth Circuit dismissed the appeal noting that the Notice of Appeal was not timely filed. Before the appellate court Petitioner argued that the time for appeal did not begin until after the Court denied the COA. The Tenth Circuit rejected this argument referencing cases from that Court recognizing the appellate time period begins when a final order is entered regardless of the status of a COA. Petitioner now requests the Court grant his Fed. R. Civ. P. 60(b)(1) Motion and amend the date of its final order and judgment so that he may timely appeal.

Petitioner’s Motion will be denied. The Tenth Circuit has held “Rule 60(b)(1) relief is not available for a party who simply misunderstands the legal consequences of his

deliberate acts.” Cashner v. Freedom Stores, Inc., 98 F.3d 572, 577 (10th Cir. 1996). It is clear from Petitioner’s argument that at best his counsel was mistaken regarding the trigger date for filing a Notice of Appeal. That mistake is not within the scope of those correctable by Rule 60(b)(1).

For the reasons set forth herein, Petitioner’s Motion for Relief from an Order and Judgment Pursuant to Fed. R. Civ. P. 60(b)(1) (Dkt. No. 24) is DENIED.

IT IS SO ORDERED this 12th day of February, 2019.



ROBIN J. CAUTHRON
United States District Judge